

Serial No. 10/797,631

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Remarks

Claims 1-34 are pending in the application. Claims 1-15 and 28-34 are allowed. Claim 23 has been amended to depend from claim 20. The claim has also been amended to correct the misspelling of the word "agent". The amendments are made to correct the inadvertent typographical errors in claim 23. Reconsideration is respectfully requested based on the remarks below.

Claim Objections

Claim 23 is objected to because it depends from itself. As such it has not been further treated on the merits.

Applicant has amended claim 23 to depend from claim 20 to correct the inadvertent typographical error. The claim has also been amended to correct the misspelling of the word "agent". Since these errors are purely formal in nature and do not narrow, but may broaden the scope of the claim, Applicant respectfully submits that the amendments should not limit the available scope of equivalents under the Doctrine of Equivalents. Also, amended claim 23 now depends from claim 20. Applicant believes that it is also patentable for at least the same reasons as the remarks made below in connection to claim 20. Reconsideration is respectfully requested.

Double Patenting

Claims 16-19 are rejected on the ground of nonstatutory double patenting over claims 28 and 29 of U. S. Patent No. 5,713,738 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. Claims 16-18, 20, 21, 26 and 27 are rejected on the ground of nonstatutory double patenting over claims 20, 24-26 of U. S. Patent No. 5,645,428 since the claims, if

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allowed, would improperly extend the "right to exclude" already granted in the patent.

The Examiner contents that the claims of the patents noted above "anticipate" the claims of the application. Accordingly, the application claims are not patentably distinct from the patent claims. Here, the more specific patent claims encompass the broader application claim. Therefore, following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

The Examiner notes that a timely filed terminal disclaimer in compliance with 37 CFR 1.32 1(c) or 1.32 1(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22, 24 and 25 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In complying with the Examiner's request, Applicant is submitting a terminal disclaimer in compliance with 37 CFR 1.32 1(c) or 1.32 1(d) for overcoming the rejection based on a nonstatutory double patenting ground, stating that the present conflicting application is commonly owned with U.S.

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patent nos. 5,645,428 and 5,713,738. See assignment documents previously submitted on July 20, 2006. Favorable action is respectfully solicited.

As for claims 22, 24 and 25 which are objected to as being dependent upon a rejected base claim, the rejection of the base claim has been overcome by the terminal disclaimer. Thus, these claims are also now deemed allowable. Reconsideration is respectfully requested.

Allowable Subject Matter

Claims 1-15 and 28-34 are allowed. Applicant thanks the Examiner for the favorable action.

Conclusion

The applicant believes that this Amendment addresses all of the points raised in the Office Action, and requests reconsideration and early allowance of the present application.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact the undersigned at 310-845-8501

Dated: Jan 15, 2007

Respectfully submitted,



Nancy N. Quan
Reg. 36, 248
Discus Dental Impressions, Inc.
8550 Higuera Street
Culver City, California 90232
Direct Line: 310-845-8501
Facsimile: 310-845-8619
NancyQ@DiscusDental.com

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